UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FUSION ORTHOPEDICS, LLC,
Petitioner,

v.

EXTREMITY MEDICAL, LLC,
Patent Owner.

Case IPR2023-00894
U.S. Patent No. 11,298,166

PATENT OWNER'S SECOND SET OF OBJECTIONS PURSUANT TO 37 C.F.R. § 42.64(b)(1)

Pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence ("FRE"), Patent Owner Extremity Medical, LLC hereby submits its objections to Exhibits 1054 and 1064 submitted by Petitioner Fusion Orthopedics, LLC on August 7, 2024.[1]

I. EXHIBIT 1054

Patent Owner objects to all opinions contained in Exhibit 1054 that reference, are based on, or rely on **Exhibit 1064**, including at least the following paragraphs: [008], [023], and [024], for the reasons set forth below. *See infra* Section II.

Patent Owner also objects to all opinions contained in Exhibit 1054 that reference, are based on, or rely on the "**3D model of Zhang's assembly that [Mr. Dominguez allegedly] prepared**," Ex. 1054, [022] (emphasis added), including at

[1] Although Patent Owner does not dispute, for the purposes of this proceeding only, that the Exhibits 1056 (Mazur application), 1057 (Mazur provisional application), 1058 (Zhang translation), 1059 (Zhang original reference), 1060 (Melkent application), 1061 (Marcus patent), 1062 (Chandran patent), and 1063 (Gooch application) are prior art to the '166 Patent, nothing herein should be considered to be an admission by Patent Owner that such references are, in fact, prior art to the '166 Patent. Patent Owner reserves all rights to contest, in any other proceeding, that any of these references are prior art to the '166 Patent.

least the following paragraphs: [002] and [022]-[024]. Patent Owner objects to such model and related opinions under FRE 401/402/403 on the ground that they are inadmissible at least because the Zhang reference (Exs. 1057/1058) speaks for itself and any information not contained in the Zhang reference that is part of the 3D model is, by definition, not part of Zhang, and therefore, irrelevant to any issue in the proceedings. Further, the probative value (to the extent there is any) of such model and related opinions is outweighed by other considerations including prejudice, confusion, and waste of time. Patent Owner further objects to such model and related opinions as inadmissible under FRE 901 because the model has not been authenticated.

Finally, Patent Owner objects to all opinions contained in Exhibit 1054 that reference, are based on, or rely on Exhibit 1045, to which Patent Owner has previously objected, including at least the following paragraphs: [008] (Exhibit 1045) and [023]-[024] (Exhibit 1045). Patent Owner objects to these opinions on the same grounds set forth in its objections to Exhibit 1045, *see* Patent Owner's Objections Pursuant to 37 C.F.R. § 42.64(b)(1) (Paper 33), pp. 3-4, namely, under FRE 401/402/403 because they are inadmissible at least because Figures 9 and 18 of the '166 Patent speak for themselves and any information not contained in such Figures that is part of the 3D model is, by definition, not part of the '166 Patent, and therefore, irrelevant to any issue in the proceedings. Further, the probative

value (to the extent there is any) of such opinions is outweighed by other considerations including prejudice, confusion, and waste of time. Patent Owner further objects to such opinions as inadmissible for being based on a model that has not been authenticated under FRE 901.

II. EXHIBIT 1064

Petitioner describes Exhibit 1064 as "Additional still images from Fig-18-final.blend" (Ex. 1045). Petitioner Opposition to Revised Motion to Amend (Paper 49), p. iv. Petitioner asserts that Exhibit 1064 contains still images generated from a three-dimensional model of the device depicted in Figure 18 of the '166 Patent. *See id*. at 2. Patent Owner objects to Exhibit 1064 and all statements that reference, are based on, or rely on the same, including those contained in the Petitioner Opposition to Patent Owner's Revised Motion to Amend (Paper 49) and Exhibit 1054, *see supra* Section I.

Patent Owner objects to this Exhibit and related statements under FRE 401/402/403 on the ground that they are inadmissible as irrelevant, at least because the '166 Patent speaks for itself and any information not contained in the '166 Patent that is part of Exhibit 1064 is, by definition, not part of '166 Patent, and therefore, irrelevant to any issue in the proceedings. Further, the probative value (to the extent there is any) of Exhibit 1064 and related statements is outweighed by other considerations including prejudice, confusion, and waste of time. Patent

Owner further objects to Exhibit 1064 and related statements as inadmissible under FRE 901 because Exhibit 1064 has not been authenticated.

Respectfully submitted,

Dated: August 14, 2024

By: /Vincent M. Ferraro/

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), I hereby certify that on August 14, 2024, I caused a copy of the foregoing document to be served via electronic mail to the following addresses for counsel for Petitioner as indicated in Petitioner's Revised Mandatory Notices (Paper 18):

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